

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THE ANNUITY, WELFARE AND
APPRENTICESHIP SKILL IMPROVEMENT
& SAFETY FUNDS OF THE
INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 15, 15A, 15C & 15D,
AFL-CIO, By Their Trustees JAMES T.
CALLAHAN, THOMAS A. CALLAHAN,
MICHAEL SALGO and DENISE M.
RICHARDSON; CENTRAL PENSION FUND
OF THE INTERNATIONAL UNION OF
OPERATING ENGINEERS, By Its Chief
Executive Officer MICHAEL A. CRABTREE;
INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 15, 15A, 15C & 15D,
AFL-CIO, By Its President & Business
Manager THOMAS A. CALLAHAN,

Plaintiffs,

-against-

GETTY CONTRACTING, LLC,

Defendant.

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AMON, United States District Judge:

Plaintiffs the International Union of Operating Engineers Local 15, 15A, 15C and 15D (the “Union”), various employee fringe benefit trust funds of the Union, and the Central Pension Fund of the International Union of Operating Engineers bring this suit against defendant Getty Contracting, LLC pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq. (“ERISA”), and Section 301 of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 185 et seq. (“LMRA”). (D.E. # 1 (“Compl.”).) Through their trustees and officers, Plaintiffs seek to compel an audit of Getty’s books and records to determine whether benefit contributions were properly paid and to recover any delinquent contributions, as

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U.S. DISTRICT COURT E.D.N.Y.

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BROOKLYN OFFICE

NOT FOR PUBLICATION
ORDER
18-CV-1450 (CBA) (RLM)

well as interest, statutory damages, and costs and fees. (Id.) Plaintiffs have moved for default judgment against Getty. (D.E. # 8.) The Court referred the motion to the Honorable Roanne L. Mann, United States Chief Magistrate Judge, who thereafter submitted a Report and Recommendation (“R&R”) recommending that the Court grant Plaintiff’s motion for default judgment against Getty. (D.E. # 18.)

No party has objected to the R&R, and the time for doing so has passed. When deciding whether to adopt a report and recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). To accept those portions of the R&R to which no timely objection has been made, “a district court need only satisfy itself that there is no clear error on the face of the record.” Jarvis v. N. Am. Globex Fund, L.P., 823 F. Supp. 2d 161, 163 (E.D.N.Y. 2011) (internal quotation marks and citation omitted).

The Court has reviewed the record and, finding no clear error, adopts the well-reasoned R&R as the opinion of the Court. Accordingly, the claims brought on behalf of plaintiffs Local 15C and Local 15D and their related employee fringe benefit trust funds are dismissed. The Court grants Plaintiffs’ motion for default judgment against Getty and orders Getty to promptly submit to an audit for the period July 1, 2013 through March 31, 2018, and produce payroll records, including Tax Forms 941, quarterly payroll tax forms (NYS-45), corporate payroll records, cash disbursement records, W-2 tax forms, payroll reports, and cancelled checks. Plaintiffs may move to reopen this case following an audit to seek an amended judgment against Getty for any deficiency and related damages. Plaintiffs’ request for fees and costs is denied without prejudice to renewal thereof upon completion of the audit and any ensuing inquest proceeding.

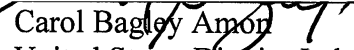
The Court directs the Clerk of Court to close this case and to transmit a copy of this order to Getty at the following address:

Getty Contracting, LLC
7 Block Alley
Monroe, NY 10950

SO ORDERED.

Dated: December 11, 2018
Brooklyn, New York

s/Carol Bagley Amon


Carol Bagley Amon
United States District Judge